

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANDREW LEE HENDRICKS, II,)
)
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Plaintiff,)
)
)
v.) Case No. CIV-17-970-D
)
)
LEVIE DRAKE, *et al.*,)
)
)
Defendants.)

O R D E R

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Bernard M. Jones pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) on March 5, 2018. Judge Jones recommends that Plaintiff's claims against Defendant Lt. White should be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service of process, thus terminating the action.¹

Plaintiff has not filed a timely objection nor requested additional time to object, even though he was expressly advised of the right to object, the deadline and procedure for filing an objection, and the consequences of failing to object. The record reflects that the Clerk's mailings to Plaintiff, including a copy of Judge Jones' Report, have been returned as undeliverable. However, it is Plaintiff's responsibility to provide written notice of any change of address. Pursuant to LCvR5.4(a), a mailing to his last known address given to the Court is deemed delivered. The Court finds that any failure to receive a copy of the

¹ Plaintiff's claims against Defendants Levie Drake and F. DeWayne Beggs Detention Center were dismissed upon initial screening of the Complaint. See 12/1/17 Order [Doc. No. 15].

Report does not provide a basis for an exception to the Tenth Circuit's "firm waiver" rule. *See Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (pro se plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in Judge Jones' Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons stated by Judge Jones, the Court finds that an extension of time to effect service of process is unwarranted under the circumstances and a dismissal under Rule 4(m) is appropriate.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 18] is ADOPTED. The action against Defendant Lt. White is DISMISSED without prejudice. Because this Order disposes of all remaining claims asserted by Plaintiff in his Complaint, a separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 27th day of March, 2018.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE